

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY CRANE,
Plaintiff,

v.

Case No. 1:18-cv-227

ERIC SMITH, et al.,
Defendants.

HONORABLE PAUL L. MALONEY

ORDER ADOPTING REPORT AND RECOMMENDATION

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants Miseta and Smiley filed a motion for summary judgment. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (“R&R”) on June 9, 2020, recommending that this Court grant the motion and enter judgment in favor of Defendants. Defendants Miseta and Smiley, through counsel, received a copy of the R&R electronically. The copy of the R&R mailed to the Plaintiff was returned to the Court marked “RTS, P”. The Court has reviewed the Offender Tracking System for the Michigan Department of Corrections which lists Plaintiff as paroled.

Even though the Plaintiff has not received a copy of the R&R, Plaintiff has been properly served under the Federal Rules of Civil Procedure. As required by statute, the magistrate judge filed the R&R with the Court and mailed a copy to the Plaintiff at his last known address. *See* 28 U.S.C. § 636(b)(1)(C) (“the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.”). Upon placing the R&R in the mail to the Plaintiff’s last known address, service was complete. Fed. R. Civ. P. 5(b)(2)(C). Plaintiff has a continuing obligation to apprise the Court of his current address.

See W.D. Mich. L.Civ.R. 41.1 (“Failure of a plaintiff to keep the Court apprised of his current address shall be grounds for dismissal for want of prosecution.”). The R&R was duly served on the parties.

After being served with a R&R issued by a Magistrate Judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). Failure to file an objection results in a waiver of the issue and the issue cannot be appealed. *Id.* *See also Thomas v. Arn*, 474 U.S. 140, 155 (1985) (upholding the Sixth Circuit's practice). No objections have been filed to date.

Although the Plaintiff's failure to file objections is a sufficient reason to adopt the R&R, this Court has reviewed the merits of the report and finds the magistrate judge's reasoning and conclusions sound. Therefore,

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 90) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 81) is GRANTED.

Although the Court concludes that Plaintiff's claims are properly dismissed, the Court does not conclude that any issue Plaintiff might raise on appeal would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, the Court does not certify that an appeal would not be taken in good faith.

A Judgment will be entered consistent with this Order.

Dated: June 24, 2020

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge